

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MICROSOFT CORPORATION,

Plaintiff,

vs.

INTERNAL REVENUE SERVICE,

Defendant.

NO.

COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF

Plaintiff Microsoft Corporation (“Plaintiff” or “Microsoft”) brings this action for declaratory and injunctive relief under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, as amended, and the Administrative Procedure Act (“APA”), 5 U.S.C. § 701 *et seq.*, and complains as follows:

**INTRODUCTION**

1. Plaintiff seeks to compel the disclosure of records that were unlawfully withheld by the Internal Revenue Service (“Defendant” or “IRS”).

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COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF - 1

LAW OFFICES  
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**JURISDICTION AND VENUE**

2. This Court has jurisdiction over this case pursuant to 5 U.S.C. § 552(a)(4)(B).  
The Court also has jurisdiction over this case pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 702.

3. Venue is proper in this Court pursuant to 5 U.S.C. § 552(a)(4)(B).

**PARTIES**

4. Plaintiff is a Washington corporation with its principal place of business located in Redmond, Washington.

5. Defendant is an agency of the United States government within the meaning of 5 U.S.C. § 552(f)(1), headquartered in Washington, D.C., that has possession and control over the records that Plaintiff seeks under the FOIA.

**STATUTORY FRAMEWORK**

6. The FOIA requires federal government agencies to release requested agency records to the public unless one or more specific statutory exemptions apply. 5 U.S.C. § 552(a)(3)(A).

7. Records are agency records subject to the FOIA if the agency created or obtained them and the agency controlled them at the time the FOIA request is made. *U.S. Dep't of Justice v. Tax Analysts*, 492 U.S. 136, 144-45 (1989).

8. An agency has twenty (20) working days after receipt of a FOIA request in which to determine whether to comply with the request. 5 U.S.C. § 552(a)(6)(A)(i). If the agency fails to respond, this Court has jurisdiction upon receipt of a complaint to review, *de novo*, the agency's failure to respond and order the production of any agency records improperly withheld from the requester. 5 U.S.C. § 552(a)(4)(B).

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**STATEMENT OF FACTS**

**A. Introduction**

9. Defendant, a bureau of the Department of the Treasury, is responsible for the administration and enforcement of the federal tax laws.

10. Defendant is presently conducting an examination of Plaintiff's federal income tax returns for the tax years ended June 30, 2004 through June 30, 2009 (the "IRS Examinations").

**B. The Boies Schiller Contract**

11. On September 19, 2013, Defendant and Boies Schiller & Flexner ("Boies Schiller"), a law firm, entered into a contract in the amount of \$350,000 for Boies Schiller's provision of legal services. After a reasonable opportunity for further investigation or discovery, it is likely that there will be evidentiary support that Defendant procured these services in connection with the IRS Examinations.

12. Boies Schiller has "over 200 lawyers practicing in offices across the country," and "regularly serve[s] as lead counsel in the most significant and highest profile disputes in the world." *About Us - Firm Overview - Boies, Schiller & Flexner LLP*, [http://www.bsflp.com/about/firm\\_overview.html](http://www.bsflp.com/about/firm_overview.html) (last visited Mar. 7, 2015).

**C. The Quinn Emanuel Contract**

13. On May 19, 2014, Defendant and Quinn Emanuel Urquhart & Sullivan, LLP, ("Quinn Emanuel"), a law firm, entered into a contract in the amount of \$2,185,500 for Quinn Emanuel's provision of legal services to Defendant in connection with the IRS Examinations.

14. Quinn Emanuel "is a 700-lawyer business litigation firm with 18 offices around the globe, each devoted solely to business litigation and arbitration." *Quinn Emanuel: Overview*, <http://www.quinnemanuel.com/#4> (last visited Mar. 7, 2015).

**D. The Temporary and Proposed Treasury Regulations**

15. On June 18, 2014, the IRS issued Temporary and Proposed Treasury Regulations purporting to allow IRS contractors, such as Boies Schiller and Quinn Emanuel, to question witnesses pursuant to summons in IRS Examinations. T.D. 9669, 79 Fed. Reg. 34625 (Jun. 18, 2014) (“Treas. Reg. § 301.7602-1T”); REG-121542-14, 79 Fed. Reg. 34668 (Jun. 18, 2014) (“Prop. Treas. Reg. § 301.7602-1”).

**E. The Summons**

16. On October 30, 2014, the IRS served on Microsoft a designated summons pursuant to 26 U.S.C. § 6503(j).

**F. Plaintiff’s First FOIA Request**

17. On December 12, 2014, Plaintiff’s counsel prepared a FOIA request, on Plaintiff’s behalf (“Plaintiff’s First FOIA Request”). A true and correct copy of Plaintiff’s First FOIA Request is attached hereto as Exhibit A. Plaintiff’s First FOIA Request sought:

- (1) All documents representing proposals for services to be rendered by Boies Schiller & Flexner LLP (“Boies Schiller”), its partners, and/or its employees to the IRS.
- (2) All documents representing agreements (and all modifications to agreements) between Boies Schiller and the IRS for the performance of services to be rendered by Boies Schiller, its partners, and/or its employees. This request includes, but is not limited to, the complete contract between Boies Schiller and the IRS (and all modifications thereto), which [www.usaspending.gov](http://www.usaspending.gov) identifies as contract number TIRNE-13-C-00031, entered into on September 19, 2013, with an obligation amount of \$350,000.

18. Plaintiff’s First FOIA Request was received by the appropriate component of the IRS on December 15, 2014.

1           19.     On January 15, 2015, Defendant sent Plaintiff's counsel a letter in connection  
2 with Plaintiff's First FOIA Request ("Defendant's January 15, 2015 Letter"). A true and  
3 correct copy of Defendant's January 15, 2015 Letter is attached hereto as Exhibit B.

4           20.     Defendant's January 15, 2015 Letter claimed that Defendant was unable to meet  
5 the 20 working-day statutory deadline to respond to Plaintiff's First FOIA Request, and  
6 claimed entitlement to a 10-day statutory extension, to January 30, 2015, to "search for, collect,  
7 and review responsive records from other locations." *Id.*, at 1.

8           21.     Defendant's January 15, 2015 Letter further claimed that Defendant would "still  
9 be unable to locate and consider release of the requested records by January 30, 2015[.]" and  
10 without statutory authority unilaterally "extended the response date to March 31, 2015." *Id.*

11           22.     To date, Defendant has not responded to Plaintiff's First FOIA Request.

12           23.     The statutory deadline for Defendant to respond to Plaintiff's First FOIA  
13 Request, January 30, 2015, has expired.

14           24.     Because Defendant failed to comply with the FOIA time limit provisions,  
15 Plaintiff has exhausted its administrative remedies in accordance with 5 U.S.C. §  
16 552(a)(6)(C)(i).

17           **G.     Plaintiff's Second FOIA Request**

18           25.     On December 12, 2014, Plaintiff's counsel prepared a second FOIA request, on  
19 Plaintiff's behalf ("Plaintiff's Second FOIA Request"). A true and correct copy of Plaintiff's  
20 Second FOIA Request is attached hereto as Exhibit C. Plaintiff's Second FOIA Request  
21 sought:

- 22                   (1)     All documents maintained by the IRS regarding the regulatory history of  
23                           Prop. Treas. Reg. § 301.7602-1, REG-121542-14, published in the  
24                           Federal Register at 79 Fed. Reg. 34668 (Jun. 18, 2014), including, but  
25                           not limited to, public comments, hearing transcripts, IRS  
                             communications (internal or otherwise), and all other similar documents.

(2) All documents maintained by the IRS regarding the regulatory history of Temp. Treas. Reg. § 301-7602-1T, RIN 1545-BM25, contained in Treasury Decision 9669, published in the Federal Register at 79 Fed. Reg. 34625 (Jun. 18, 2014), including, but not limited to, public comments, hearing transcripts, IRS communications (internal or otherwise), and all other similar documents.

26. Plaintiff's Second FOIA Request was received by the appropriate component of the IRS on December 16, 2014.

27. On January 15, 2015, Defendant sent Plaintiff's counsel a letter in connection with Plaintiff's Second FOIA Request ("Defendant's Second January 15, 2015 Letter"). A true and correct copy of Defendant's Second January 15, 2015 Letter is attached hereto as Exhibit D.

28. Defendant's Second January 15, 2015 Letter claimed that Defendant was unable to meet the 20 working-day statutory deadline to respond to Plaintiff's Second FOIA Request, and claimed entitlement to a 10-day statutory extension, to February 2, 2015, to "[s]earch for and collect the requested records from other locations." *Id.*, at 1.

29. On February 2, 2015, Defendant sent Plaintiff's counsel a second letter in connection with Plaintiff's Second FOIA Request ("Defendant's February 2, 2015 Letter"). A true and correct copy of Defendant's February 2, 2015 Letter is attached hereto as Exhibit E.

30. Defendant's February 2, 2015 Letter claimed that Defendant needed "additional time to obtain and review the records[.]" and without statutory authority unilaterally extended its response date to April 2, 2015. *Id.*

31. To date, Defendant has not responded to Plaintiff's Second FOIA Request.

32. The statutory deadline for Defendant to respond to Plaintiff's Second FOIA Request, February 2, 2015, has expired.

33. Because Defendant failed to comply with the FOIA time limit provisions, Plaintiff has exhausted its administrative remedies in accordance with 5 U.S.C. § 552(a)(6)(C)(i).

**H. Plaintiff's Third FOIA Request**

34. On December 12, 2014, Plaintiff's counsel prepared a third FOIA request, on Plaintiff's behalf ("Plaintiff's Third FOIA Request"). A true and correct copy of Plaintiff's Third FOIA Request is attached hereto as Exhibit F. Plaintiff's Third FOIA Request sought:

(1) All documents exchanged between or among the IRS and one or more of the following individuals or entities, relating to, referencing, or addressing the issues covered by Prop. Treas. Reg. § 301.7602-1, REG-121542-14, published in the Federal Register at 79 Fed. Reg. 34668 (Jun. 18, 2014), or Temp. Treas. Reg. § 301-7602-1T, RIN 1545-BM25, contained in Treasury Decision 9669, published in the Federal Register at 79 Fed. Reg. 34625 (Jun. 18, 2014):

- (a) Aaron Goldberg, Content 4IT
- (b) Boies Schiller & Flexner LLP
- (c) Chris Kemerer
- (d) Content 4IT
- (e) Dan Kusnetzky
- (f) Daniel J. Frisch
- (g) David Boies, Boies Schiller & Flexner LLP
- (h) Elysium Digital, LLC
- (i) Horst Frisch, Inc.
- (j) Jack Baumann, Quinn Emanuel
- (k) Jeremy Anderson, Quinn Emanuel

- (l) John Gordon, Quinn Emanuel
- (m) John Quinn, Quinn Emanuel
- (n) Kusnetzky Group
- (o) Noah Helporn, Quinn Emanuel
- (p) Ove Haxhausen
- (q) Quinn Emanuel
- (r) Westside Group

(2) All documents sent to or sent by the following current and former IRS personnel, relating to, referencing, or addressing the issues covered by Prop. Treas. Reg. § 301.7602-1, REG-121542-14, published in the Federal Register at 79 Fed. Reg. 34668 (Jun. 18, 2014), or Temp. Treas. Reg. § 301-7602-1T, RIN 1545-BM25, contained in Treasury Decision 9669, published in the Federal Register at 79 Fed. Reg. 34625 (Jun. 18, 2014):

- (a) A. M. Gulas, Senior Counsel, Office of Chief Counsel, Procedure & Administration
- (b) Charles Christopher, Branch Chief, Office of Chief Counsel, Procedure & Administration
- (c) Cheryl Claybough, Industry Director, Large Business & International, Communications, Technology & Media
- (d) Christopher Sterner, Deputy Chief Counsel (Operations), Office of Chief Counsel
- (e) Drita Tonuzi, Associate Chief Counsel, Office of Chief Counsel, Procedure & Administration
- (f) Eli Hoory, Senior International Advisor, Large Business & International, Transfer Pricing Operations



- (g) Ewan Purkiss, Area Counsel (Communications, Technology & Media), Office of Chief Counsel, Large Business & International
- (h) Heather Maloy, Commissioner, Large Business & International
- (i) Kenneth Wood, Acting Director of Transfer Pricing Operations, Large Business & International, Transfer Pricing Operation
- (j) Kimberly Edwards, Director, Field Operations, Large Business & International, Communications, Technology & Media
- (k) Laurel Robinson, Deputy Division Counsel (Operations), Office of Chief Counsel, Large Business & International
- (l) Linda Kroening, Division Counsel, Office of Chief Counsel, Large Business & International
- (m) Michael Danilack, Former Deputy Commissioner (International), Large Business and International
- (n) Nancy Bronson, Territory Manager (West), Large Business & International, Transfer Pricing Practice
- (o) Robert Ratchford, Deputy Area Counsel (SL), Office of Chief Counsel, Large Business & International
- (p) Samuel Maruca, Former Director of Transfer Pricing Operations, Large Business & International, Transfer Pricing Operations
- (q) Sharon Porter, Acting Director, Large Business & International, International Business Compliance
- (r) Thomas Vidano, Deputy Division Counsel (International), Office of Chief Counsel, Large Business & International

- (s) William McCarthy, Attorney, Office of Chief Counsel, Large Business & International
- (t) William Merkle, Area Counsel (Retailers, Food, Transportation & Healthcare), Office of Chief Counsel, Large Business & International
- (u) William Sabin, Senior Counsel, Office of Chief Counsel, Large Business & International
- (v) Woo Jung (Walter) Choi, Supervisory Internal Revenue Agent, Large Business & International, International Business Compliance

- (3) All documents directly or indirectly referencing Microsoft that also relate to, reference, or address the issues covered by Prop. Treas. Reg. § 301.7602-1 or Temp. Treas. Reg. § 301-7602-1T.

35. Plaintiff's Third FOIA Request was received by the appropriate component of the IRS on December 15, 2014.

36. On January 15, 2015, Defendant sent Plaintiff's counsel a letter in connection with Plaintiff's Third FOIA Request ("Defendant's Third January 15, 2015 Letter"). A true and correct copy of Defendant's Third January 15, 2015 Letter is attached hereto as Exhibit G.

37. Defendant's Third January 15, 2015 Letter claimed that Defendant was unable to meet the 20 working-day statutory deadline to respond to Plaintiff's Third FOIA Request, and claimed entitlement to a 10-day statutory extension, to January 30, 2015, to "[s]earch for, collect, and review responsive records from other locations." *Id.*, at 1.

38. Defendant's Third January 15, 2015 Letter further claimed that Defendant would "still be unable to locate and consider release of the requested records by January 30, 2015[,]" and without statutory authority unilaterally "extended the response date to March 31, 2015." *Id.*

39. To date, Defendant has not responded to Plaintiff's Third FOIA Request.

40. The statutory deadline for Defendant to respond to Plaintiff's Third FOIA Request, January 30, 2015, has expired.

41. Because Defendant failed to comply with the FOIA time limit provisions, Plaintiff has exhausted its administrative remedies in accordance with 5 U.S.C. § 552(a)(6)(C)(i).

**I. Plaintiff's Fourth FOIA Request**

42. On December 29, 2014, Plaintiff's counsel prepared a fourth FOIA request, on Plaintiff's behalf ("Plaintiff's Fourth FOIA Request"). A true and correct copy of Plaintiff's Fourth FOIA Request is attached hereto as Exhibit H. Plaintiff's Fourth FOIA Request sought:

- (1) All documents relating to or referencing the pre-issuance review of the Summons, as required by I.R.C. § 6503(j)(2)(A)(i) and Treas. Reg. § 301.6503(j)-1(c)(1)(i).
- (2) All documents relating to or referencing the Field Territory Manager preapproval of the Summons, as required by IRM 25.5.3.3.10(2).
- (3) All documents exchanged between Territory Manager(s) and Associate Area Counsel relating to or referencing the Summons, including but not limited to the memorandum described in IRM 25.5.3.3.10(2)(b).
- (4) To the extent not produced in response to the foregoing requests, all documents sent to or sent by the following individuals, relating to or referencing the Summons:
  - (a) Heather Maloy, Division Commissioner, Large Business & International
  - (b) Cheryl Claybough, Industry Director, Large Business & International, Communications, Technology & Media
  - (c) Kimberly Edwards, Director, Field Operations, Large Business & International, Communications, Technology & Media

- (d) Sharon Porter, Acting Director, Large Business & International, International Business Compliance
- (e) Donald R. Focht, Territory Manager, Large Business & International, International Business Compliance
- (f) Kenneth Wood, Acting Director of Transfer Pricing Operations, Large Business & International, Transfer Pricing Operations
- (g) Nancy Bronson, Territory Manager (West), Large Business & International, Transfer Pricing Practice
- (h) Linda Kroening, Division Counsel, Large Business & International
- (i) Laurel Robinson, Deputy Division Counsel (Operations), Office of Chief Counsel, Large Business & International
- (j) Thomas Vidano, Deputy Division Counsel (International), Office of Chief Counsel, Large Business & International
- (k) Ewan Purkiss, Area Counsel (Communications, Technology & Media), Office of Chief Counsel, Large Business & International
- (l) Cathy Goodson, Associate Area Counsel (Communications, Technology & Media), Office of Chief Counsel, Large Business & International
- (m) William Merkle, Area Counsel (Retailers, Food, Transportation & Healthcare), Office of Chief Counsel, Large Business & International
- (n) Robert Ratchford, Deputy Area Counsel (SL), Office of Chief Counsel, Large Business & International

43. On January 27, 2015, Defendant sent Plaintiff's counsel a letter in connection with Plaintiff's Fourth FOIA Request ("Defendant's January 27, 2015 Letter"). A true and correct copy of Defendant's January 27, 2015 Letter is attached hereto as Exhibit I.

44. Defendant's January 27, 2015 Letter claimed that Defendant was unable to meet the 20 working-day statutory deadline to respond to Plaintiff's Fourth FOIA Request, and claimed entitlement to a 10-day statutory extension, to January 30, 2015, to "[s]earch for and collect the requested records from other locations." *Id.*, at 1.

45. On February 9, 2015, Defendant sent Plaintiff's counsel a second letter in connection with Plaintiff's Fourth FOIA Request ("Defendant's February 9, 2015 Letter"). A true and correct copy of Defendant's February 9, 2015 Letter is attached hereto as Exhibit J.

46. Defendant’s February 9, 2015 Letter claimed that Defendant needed “additional time to obtain and review the records[,]” and without statutory authority unilaterally extended its response date to April 2, 2015. *Id.*

47. To date, Defendant has not responded to Plaintiff's Fourth FOIA Request.

48. The statutory deadline for Defendant to respond to Plaintiff's Fourth FOIA Request, January 30, 2015, has expired.

49. Because Defendant failed to comply with the FOIA time limit provisions, Plaintiff has exhausted its administrative remedies in accordance with 5 U.S.C. § 552(a)(6)(C)(i).

## CAUSES OF ACTION

**First Cause of Action**  
**(Production Under the FOIA)**

50. Plaintiff asserts and incorporates by reference paragraphs 1-49.

51. Plaintiff properly requested records within Defendant's control and possession in accordance with the FOIA.

52. Plaintiff is entitled under the FOIA to access the requested records.

53. Defendant wrongfully withheld the requested records in violation of the FOIA.

55. Plaintiff asserts and incorporates by reference paragraphs 1-49.

56. Plaintiff properly requested records within Defendant's control in accordance with the FOIA.

57. Plaintiff is entitled under the FOIA to access the requested records.

58. Defendant's failure to respond to Plaintiff's FOIA Request constitutes agency action unlawfully withheld and unreasonably delayed, in violation of the APA. Defendant's failure to timely respond is arbitrary, capricious, an abuse of discretion, not in accordance with law, and without observance of procedure required by law, all in violation of the APA.

WHEREFORE, Plaintiff prays that this Court:

a. declare that Defendant's failure to disclose the records requested by Plaintiff is unlawful;

b. enjoin defendant from withholding and order Defendant to disclose the requested records to Plaintiff, in accordance with 5 U.S.C. § 552(a)(4)(B);

c. award Plaintiff its costs and reasonable attorney fees, in accordance with 5 U.S.C. § 552(a)(4)(E); and

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d. grant such other and further relief as the Court may deem just and proper.

DATED this 11<sup>th</sup> day of March, 2015.

CALFO HARRIGAN LEYH & EAKES LLP

By s/ Patricia A. Eakes

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